IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10286 of 2004
with
SPECIAL CIVIL APPLICATION No 10414 of 2004
with
SPECIAL CIVIL APPLICATION No 5631 of 2004
with
SPECIAL CIVIL APPLICATION No 8729 of 2004
with
SPECIAL CIVIL APPLICATION No 11512 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DADABHAI ABHELBHAI DARBAR

Versus

WEST END SPORTS CLUB

Appearance:

1. Special Civil Application No. 10286 of 2004
MR YN RAVANI for Petitioner No. 1
..... for Respondent No. 1-5/3,5/5-5/9
M/S THAKKAR ASSOC. for Respondent No. 5/4

2. Special Civil Application No. 10414 of 2004
MR YN RAVANI for Petitioner No. 1
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/10/2004

COMMON ORAL JUDGEMENT

Since in all the matters challenge is common and the facts are inter-connected, they are being dealt with the common order finally.

2. SCA No.10286/2004 is preferred by the petitioner challenging the order dated 29.5.2004 passed by the State Government in exercise of revisional jurisdiction, whereby the revision is dismissed and the order dated 8.1.2003 passed by the District Collector for cancellation of the entry No.474 dated 25.6.1981.

3. SCA No.10414/2004 is also preferred by the very petitioner of SCA No.10286/2004 challenging the order dated 4.1.2003 passed by the District Collector and the common order dated 29.5.2004 passed by the Secretary of the State Government, whereby the entry No.474 dated 25.6.1981 is cancelled.

4. SCA No.5631/2004 is preferred by the West End Sports Club Limited through one Arunbhai Amin challenging the show-cause notice dated 11.12.1990 issued by the Dy. Collector, Choryasi and the show-cause notice dated 15.2.1993 issued by the District Collector, Surat, whereby the proceedings for cancellation of the entry No.474 and 447 dated 27.6.1980 were initiated by the Dy. Collector. The order for cancellation of the same entry is also challenged by the petitioner.

5. SCA No.8729/2004 is preferred by the West End Sports Club Limited through one Pravinchandra Ranglidas Kapasiawala, challenging the order dated 4/8.1.2003 passed by the Collector cancelling the entry No.474 and its confirmation thereof passed by the State Government in revisional jurisdiction as per the order dated 25.5.2004.

6. SCA No.11512/2004 is also preferred by West End Sports Club Limited through one Bhogilal Hiralal Bachkaniawala, challenging the order of the Collector dated 4.1.2003 cancelling the entry No.474 and its confirmation thereof by the State Government in its revisional jurisdiction as per the order dated 25.5.2004.

7. Upon hearing the learned Counsel appearing for

the petitioners as well as for the contesting respondents and the learned AGP, it appears that there is no dispute on the point that the entry No.474 came to be mutated in the revenue record on the basis of registered sale-deed and it is the case of the Collector that by the registered sale deed and on account of the aforesaid mutation in the revenue record on the basis of the said registered sale deed, there are various breaches of the other enactment namely; the provisions of Bombay Tenancy and Agricultural Lands Act; Land Revenue Code; Bombay Prevention of Fragmentation Act; Transfer of Properties Act; Hindu Minority and Guardians Act etc., and, therefore, the entry ought not have been mutated in the revenue record. As it is found by the District Collector that there are breaches of the aforesaid other enactments, the decision is taken for cancellation of the entry and the same is confirmed by the State Government in the revisional jurisdiction.

8. Mr.Pahwa, learned Counsel for M/s.Thakkar Associates, appearing on behalf of one of the contesting respondents submitted that as such after the decision of the District Collector for cancellation of the entry, the land was sold by the original owner of the land who is his client to third party and he submitted that on behalf of the Club the said transaction was confirmed and, therefore, he submitted that as on today the petitioners cannot be said to have any interest over the land in question and, therefore, the petition is not maintainable at the instance of either the Club or any person claiming to represent the Club.

9. In this regard, it has been submitted by Mr.Kapadia, learned Counsel for the petitioner of SCA No.8729/2004 that there is inter se dispute amongst the Directors of the Club and also dispute regarding the capacity of the person to represent the Club. He submitted that for such purpose Civil Suit No.181/2003 is filed on 11.7.2003 in the Court of Civil Judge (S.D.), Surat and in view of the injunction granted by the Civil Court, the documents upon which reliance is placed by Mr.Pahwa are executed and the person who has executed the documents on behalf of the Club had no authority and, therefore, he submitted that such documents cannot be read as defeating the rights of the petitioner. It has also been submitted that plaintiff of the said suit has filed the contempt application for such purpose and the same is pending.

10. Therefore, it appears that so far as the right of the person to represented the Club for the purpose of

transferring the property and others are concerned, the civil suit No.181/2004 is preferred and the same is pending before the Civil Court and, therefore, it cannot be concluded that the petitioner i.e. West End Sports Club Limited has no locus to challenge the order passed by the Collector and the confirmation thereof by the State Government for cancelling the entry on the basis of which they were claiming to have the title of the property and, therefore, the preliminary contention of Mr.Pahwa that the petition is not maintainable cannot be accepted at this stage, more particularly in view of the pendency of the civil suit.

11. So far as the entry on the basis of registered sale deed and its consequential effect, even if it is in breach of the provisions of other enactments, are concerned, in my view, the issue is covered by the decision of this Court dated 28.9.2004 in case of "Jayantilal Jethalal Soni v. State of Gujarat" in SCA No.12547/2004. In the said decision, at para 8 and 9, it has been observed by this Court as under:

> "8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be

made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it cannot said that the orders passed by all the authorities on the basis that the Mamlatdar has not inquired into the aforesaid three aspects namely as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the provisions of Tenancy Act, are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamlatdar

> after remand that there are prima facie breach of the other enactment by the transfer in question, the revenue authority exercising power under the Code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment, as observed hereinabove in earlier paragraphs."

12. Therefore, in view of the reasons recorded therein and in view of the observations referred to hereinabove, the order passed by the Collector and its confirmation thereof by the State Government for cancelling the entry cannot be maintained as a whole, but if it is found by the authority exercising the jurisdiction under the Bombay Land Revenue Code while certifying the entry that there are breaches under the other enactments, then in that case the entry can be recorded with the qualification that the transaction is in prima facie breach of the provisions of the other enactments and the reference may be made to the competent authority under the other enactments and the entry can be certified subject to the finalization and final outcome of the proceedings under the other enactments.

13. In view of the above, the orders passed by the Collector are quashed and set aside to the extent of cancelling the entry No.474 in the Revenue Record, however, the entry in the Revenue Record shall continue with the clarification that the transaction as per the observations made by the District Collector is in breach of the provisions of various Acts (other Enactments), which are referred to in the order and the entry shall stand in the Revenue Record subject to the final outcome of the proceedings under the other enactments. It is also made clear that it would be open to the District Collector to make reference to the competent authority under the other enactments whose breaches are said to have been committed as per the order dated 4.1.2003 passed by the Collector and if such a reference is made and the proceedings are initiated by the competent authority under the other enactments, the petitioner namely West End Club Limited may raise the defence which may be available to it under law and the entry shall accordingly be modified if ultimately it is found by the competent authority that the transaction was barred and no rights are conferred on the basis of the registered sale deed.

14. SCAs No.10286/2004; 10414/2004; 5631/2004; 8729/2004 are partly allowed to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances, no costs.

15. In view of the order passed in the aforesaid SCAs No.10286/2004; 10414/2004; 5631/2004; and 8729/2004, as the impugned orders are modified accordingly, challenge made by the petitioner in SCA No.11512/2004 would not survive and hence the same shall stand disposed of accordingly.

11-10-2004 (Jayant Patel, J.)

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